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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 STACEY RAY STACH,

10 Plaintiff,

11 v.

12 BILL ELFO et al.,

13 Defendants.

Case No. 08-cv-1199-JLR-JPD

14  
15 REPORT AND RECOMMENDATION

16 I. INTRODUCTION AND SUMMARY CONCLUSION

17 Plaintiff Stacey Ray Stach, a state inmate, is proceeding *pro se* and *in forma pauperis*  
18 in this 42 U.S.C. § 1983 civil rights action against Whatcom County Jail personnel Bill Elfo,  
19 Wendy Jones, Mark Raymond, and Joyce Pearson. Dkt. No. 6. The present matter comes  
20 before the Court on Defendants' motion to dismiss for failure to exhaust administrative  
21 remedies. Dkt. No. 18. After careful consideration of the motion, Plaintiff's opposition, the  
22 governing law and the balance of the record, the Court recommends that Defendants' motion to  
dismiss be GRANTED IN PART and DENIED IN PART.

23 II. FACTS AND PROCEDURAL HISTORY

24 A. Plaintiff's Claims

25 Plaintiff's amended complaint centers on Eighth Amendment deliberate indifference  
26 and cruel and unusual punishment claims against Defendants, which allegedly arose during

1 Plaintiff's pretrial confinement at the Whatcom County Jail ("the Jail") from October 2006 to  
2 July 2007. Dkt. No. 6. In his amended complaint and attached declaration, Plaintiff complains  
3 of, *inter alia*, inmate overcrowding, unsanitary conditions, poor ventilation, lack of recreation  
4 time, only one change of clothing every seven to ten days, denial of medical treatment and  
5 medication, moldy food, and being subjected to the threat of violence. *Id.* Plaintiff also  
6 alleges Defendants denied him access to the Jail's law library and denied his speedy trial  
7 rights. *Id.*

8 B. Plaintiff's Grievances

9 Plaintiff asserts that he was denied the appropriate forms for submitting his grievances  
10 at the Jail. *Id.* He also contends that some grievances are not filed or logged by Jail officials,  
11 and that some grievances are simply ignored or "thrown away." Dkt. Nos. 22; 22-3. Plaintiff  
12 alleges that he requested grievance forms repeatedly, but unsuccessfully, and that he therefore  
13 submitted handwritten grievances on blank sheets of paper which were presented to and  
14 accepted by officers at the Jail. *Id.* Plaintiff has submitted copies of those grievances with his  
15 opposition to Defendants' motion to dismiss. *See* Dkt. No. 22-3.

16 Plaintiff's first grievance is dated February 17, 2007 and is addressed to Defendants  
17 Jones and Raymond. Dkt. No. 22-3 at 3. In his grievance, Plaintiff protests not being allowed  
18 to "write a grievance" about a clogged shower drain, broken sinks, poor ventilation, and the  
19 lack of recreation time and changes of clothes. *Id.* Plaintiff also states, "No Law Library." *Id.*  
20 In addition, Plaintiff asserts, "you refuse to address or bring grievance forms," and contends  
21 that Defendants "[throw] away all our grievance[s] so your negligence can continue not  
22 [add]ressing these issues." *Id.*

23 Plaintiff's second grievance is dated March 2, 2007 and is also addressed to Defendants  
24 Jones and Raymond. Dkt. No. 22-3 at 4. Plaintiff again takes issue with the clogged shower  
25 drain, lack of recreation time and changes of clothes, and "no law library." *Id.* Plaintiff also  
26 asks why Jail officers will not bring him proper grievance forms. *Id.*

1 Plaintiff's third grievance, dated March 7, 2007 and also addressed to Defendants Jones  
2 and Raymond, complains of the clogged shower drain, refusal of medical treatment and  
3 medication by Defendant Pearson, and the lack of recreation time and changes of clothes. Dkt.  
4 No. 22-3 at 5. In addition, Plaintiff protests not being provided grievance forms, and asks,  
5 "why are you denying my grievances[?]" *Id.*

6 Plaintiff's fourth grievance is dated April 15, 2007. Dkt. No. 22-3 at 6. The grievance  
7 is addressed to Defendants Jones and Raymond and Whatcom County Jail. *Id.* Plaintiff states  
8 that he is "giving notice [that] I am filing lawsuit [for] your refusing [to provide redress for]  
9 my issues." *Id.* Plaintiff states that he has requested grievance forms "10 [times]" for the  
10 "deprivation of maintenance, medical, recreation only 1hr every 10 days, 1 change of clothing  
11 every 7 to 10 days." *Id.* Plaintiff also complains of the broken sinks and plugged shower  
12 drain. *Id.* In addition, Plaintiff states that "nobody logs my grievances," "none of [my]  
13 grievance[s] have been answered," and asks, "how come I am being denied [a] proper way to  
14 file grievances 4 months now[?]," and "why [do] you refuse to answer grievance[s] about  
15 anything [] with [the] Jail[?]" *Id.*

16 Plaintiff was allegedly provided a grievance form for the first time in May 2007, Dkt.  
17 No. 22-3, and on May 24, 2007, Plaintiff submitted a grievance form that complained of his  
18 legal mail being opened by Jail staff members, Dkt. No. 20 at 18. This issue was apparently  
19 corrected by the Jail staff and it is not a subject of Plaintiff's lawsuit. This particular grievance  
20 was noted in the Jail's "Grievance Notification Form Issue log" ("the grievance log"), Dkt. No.  
21 20 at 10, but it appears from the record that this is the only grievance of Plaintiff's that was  
22 entered into the grievance log, as Plaintiff's four prior grievances that were handwritten on  
23 blank sheets of paper are not noted. *See* Dkt. Nos. 20; 22-3.

#### 24 C. Procedural Background

25 Plaintiff filed his original § 1983 complaint on August 11, 2008. *See* Dkt. No. 1.  
26 Plaintiff initially named Wendy Jones, Whatcom County Jail, Mark Raymond, Joyce Pearson,

1 Whatcom County Jail Mental Health and Medical Department, Whatcom County, Whatcom  
2 County Sheriff's Department and Bill Elfo as defendants. Dkt. No. 4. Plaintiff subsequently  
3 filed an amended complaint on September 15, 2008 which named only Bill Elfo, Wendy Jones,  
4 Mark Raymond, and Joyce Pearson as defendants. Dkt. No. 6. On October 20, 2008,  
5 Defendants Elfo, Jones, Raymond, and Pearson moved to dismiss Plaintiff's amended  
6 complaint for failure to exhaust administrative remedies. Dkt. No. 18. Plaintiff filed a  
7 response opposing the motion, Dkt. No. 22, but Defendants did not file a reply brief. However,  
8 on March 6, 2009, Defendants did submit an additional case citation in support of their motion  
9 to dismiss, citing to the Ninth Circuit's recent decision in *Griffin v. Arpaio*, 2009 U.S. App.  
10 LEXIS 4818 (9th Cir. Mar. 5, 2009). Dkt. No. 32. Defendants' motion to dismiss is now ripe  
11 for consideration by the Court.

### 12 III. DISCUSSION

#### 13 A. Plaintiff Has Exhausted Most of his Claims Against Defendants.

14 Defendants bring their motion to dismiss based solely on the grounds that Plaintiff  
15 failed to exhaust his administrative remedies under 42 U.S.C. § 1997e(a) of the Prison  
16 Litigation Reform Act ("PLRA"). The PLRA expressly provides that, "[n]o action shall be  
17 brought with respect to prison conditions under [section 1983], or any other Federal law, by a  
18 prisoner confined in any jail, prison, or other correctional facility until such administrative  
19 remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Those remedies "need not  
20 meet federal standards, nor must they be plain, speedy, and effective." *Porter v. Nussle*, 534  
21 U.S. 516, 524 (2002) (internal quotation omitted). Even when the prisoner seeks relief not  
22 available in grievance proceedings, notably money damages, exhaustion is still a prerequisite  
23 to suit. *Id.*; *Booth v. Churner*, 532 U.S. 731, 741 (2001). "In deciding a motion to dismiss for  
24 a failure to exhaust nonjudicial remedies, the court may look beyond the pleadings and decide  
25 disputed issues of fact. If the district court concludes that the prisoner has not exhausted  
26 nonjudicial remedies, the proper remedy is dismissal of the claim without prejudice." *Wyatt v.*

1 *Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003) (citing *Ritza v. Int'l Longshoremen's &*  
2 *Warehousemen's Union*, 837 F.2d 365, 369 (9th Cir. 1988)).

3 Here, Plaintiff has established that, with respect to most of his claims, he exhausted his  
4 administrative remedies at the Whatcom County Jail to the extent they were available to him.  
5 He asserts that he was repeatedly denied the proper forms for submitting grievances at the Jail,  
6 Dkt. No. 6, but that he nonetheless submitted handwritten grievances on blank sheets of paper  
7 which were accepted by officers at the Jail, Dkt. Nos. 22; 22-3. Plaintiff has submitted copies  
8 of those four grievances to the Court. *See* Dkt. No. 22-3. Petitioner does not know what  
9 happened with his four grievances once they were submitted to Jail officials, but he alleges that  
10 grievances are often not filed or logged by Jail officials, and that some grievances are simply  
11 ignored or discarded. Dkt. Nos. 22; 22-3.

12 Defendants do not provide any argument or evidence to refute these claims; indeed,  
13 Defendants do not deny that Plaintiff submitted four grievances on sheets of paper to Jail  
14 officials. Defendants assert only that Plaintiff knew how to use the proper grievance procedure  
15 at the Jail because he did so with respect to this May 2007 grievance regarding his legal mail  
16 being opened. Defendants also point to the Jail's grievance log and correctly note that only  
17 Plaintiff's form grievance regarding his legal mail being opened is noted in the grievance log.  
18 Therefore, Defendants conclude, because Plaintiff's other four grievances are not included in  
19 the grievance log, he did not "utilize the grievance process for any of the issues which are  
20 presently involved in his Complaint." Dkt. No. 20 at 2.

21 But Defendants' conclusion totally ignores Plaintiff's allegations that he was repeatedly  
22 denied proper grievance forms; that he nonetheless submitted four grievances on blank sheets  
23 of paper to Jail officials; that nothing happened with respect to his four grievances thereafter;  
24 and that grievances at the Jail are often not filed or logged, and that some grievances are  
25 simply ignored or discarded. Dkt. Nos. 6; 22; 22-3. In view of these allegations, as well as the  
26 copies of Plaintiff's four grievances submitted to the Court, the Court cannot conclude that

1 Plaintiff failed to exhaust his administrative remedies for most of his claims.<sup>1</sup> Plaintiff has  
2 shown that he exhausted his administrative remedies at the Jail to the extent they were  
3 available to him. *See* 42 U.S.C. § 1997e(a) (“[n]o action shall be brought with respect to  
4 prison conditions under [section 1983], or any other Federal law, by a prisoner confined in any  
5 jail, prison, or other correctional facility until such administrative remedies *as are available* are  
6 exhausted.”) (Emphasis added.) Indeed, Defendants cannot effectively prevent, frustrate, or  
7 otherwise ignore Plaintiff’s efforts to utilize the proper grievance procedure (as Plaintiff  
8 contends), and then argue that Plaintiff did not properly exhaust his administrative remedies.  
9 *See Brown v. Croak*, 312 F.3d 109, 113 (3d Cir. 2002) (holding that because prison officials  
10 thwarted plaintiff’s efforts to exhaust his remedies, the grievance procedure was not  
11 “available” to plaintiff within the meaning of § 1997e(a)); *Miller v. Norris*, 247 F.3d 736, 740  
12 (8th Cir. 2001) (holding that a remedy that prison officials prevent a prisoner from utilizing is  
13 not an “available” remedy under § 1997e(a)); *see also Brown v. Valoff*, 422 F.3d 926, 937 (9th  
14 Cir. 2005) (holding that what information prison officials provide to a prisoner concerning the  
15 operation of the prison’s grievance procedure is pertinent because “it informs our  
16 determination of whether relief was, as a practical matter, ‘available’”).

17 B. *Griffin v. Arpaio* is Unavailing to Defendants.

18 Defendants also submit a case citation in support of their motion to dismiss, citing to  
19 the Ninth Circuit’s recent decision in *Griffin v. Arpaio*, 2009 U.S. App. LEXIS 4818 (9th Cir.  
20 Mar. 5, 2009). Dkt. No. 32. Defendants provide no argument along with the case citation. In  
21 any event, this case is unavailing to Defendants because it holds only that a prisoner must  
22 provide enough factual specificity in his or her grievance such that “it alerts the prison to the  
23 nature of the wrong for which redress is sought.” *Griffin*, 2009 U.S. App. LEXIS 4818, at \*7.  
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25 <sup>1</sup> This is particularly true given that Defendants “have the burden of raising *and*  
26 *proving* the absence of exhaustion.” *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003)  
(emphasis added).

1 In *Griffin*, the plaintiff did not tell the prison officials in his grievance that the remedy to his  
2 problem that had been ordered by a prison nurse had been ignored by the prison staff.  
3 Therefore, the prison officials, who were aware of the nurse's order, reasonably believed that  
4 the order fixed the problem. In view of these facts, the Ninth Circuit concluded that the  
5 plaintiff failed to properly exhaust his administrative remedies because he did not provide  
6 notice of the prison staff's alleged disregard of the nurse's order: the prison was consequently  
7 not alerted "to the nature of the wrong." *See id.* at \*8. Here, on the other hand, reviewing  
8 Plaintiff's four grievances the Court cannot conclude that Plaintiff did not provide the Jail with  
9 enough factual information to determine "the nature of the wrong[s]" for which Plaintiff  
10 sought redress. *See id.*; *see also* Dkt. No. 22-3.

11 Accordingly, the Court finds that Plaintiff has exhausted most of his claims against  
12 Defendants that are included in his amended complaint. Specifically, the Court concludes that  
13 Plaintiff has exhausted his claims concerning the following: the shower drain being plugged  
14 and the resultant sewage discharge; the sinks being inoperable in his containment area; poor or  
15 no ventilation in his containment area; only one hour of recreation every ten days; only one  
16 change of clothing every seven to ten days; no law library access; and Defendant Pearson's  
17 alleged refusal of medication and medical treatment.<sup>2</sup> Plaintiff's remaining claims in his  
18 amended complaint are dismissed without prejudice for failure to exhaust administrative  
19 remedies.

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24 <sup>2</sup> Again, Defendants' motion to dismiss is based *solely* on Plaintiff's alleged failure to  
25 exhaust administrative remedies. Therefore, whether or not Plaintiff has stated a claim for  
26 which relief can be granted with respect to some or all of these claims is not presently before  
the Court and the Court expresses no opinion thereon.

1 IV. CONCLUSION

2 In view of the foregoing, the Court recommends that Defendants' motion to dismiss for  
3 failure to exhaust administrative remedies, Dkt. No. 18, be GRANTED IN PART and  
4 DENIED IN PART, and that Defendants be directed to file an answer. A proposed order  
5 accompanies this Report and Recommendation.

6 DATED this 9th day of April, 2009.

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8 JAMES P. DONOHUE  
9 United States Magistrate Judge